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Petitioner In Pro Per

ENDORSED

2016 AUG 30 P 2:55

David H. Yamazaki, Clerk of the Superior Court
County of Santa Clara, California
By: **J. CAO-NGUYEN**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

GARY WESLEY,

Petitioner,

Case No. **16CV299369**

vs.

LORRIE BREWER,
CITY CLERK,
CITY OF MOUNTAIN VIEW,

Respondent.

PETITION FOR WRIT
MANDATE REGARDING
MEASURE W ON THE
MOUNTAIN VIEW BALLOT
(CCP Section 526a and Elections
Code Section 9295 as incorporated
into the Mountain View City Charter)

PATRICIA SHOWALTER,
MICHAEL KASPERZAK,
CHRIS CLARK . JOHN INKS,
JOHN MCALISTER and
KEN ROSENBERG,

LENNY SIEGEL, BOB MORAN,
MICHAEL R. FRECHETTI,
DANIEL DEBOLT and
MEYGAN FRALEY.

Real Parties in Interest.

INTRODUCTION

Pursuant to **California Code of Civil Procedure 526a**, a “*citizen resident*” of Mountain View is seeking a writ of mandate removing from the November 8, 2016 ballot in Mountain View a measure (W) proposed by the City Council on the basis that, under the City Charter, the City Council has no authority to place an ordinance on the ballot for adoption (not proposed through the initiative process).

In the event Measure W is removed from the ballot, this petition seeks a writ of mandate pursuant to **California Elections Code Section 9295** (as incorporated into the Mountain View City Charter by its section 1302) to amend ballot arguments concerning another measure on the ballot (Measure V) insofar as those arguments refer to Measure W.

In the event Measure W is NOT removed from the ballot, this petition seeks the deletion (or amendment) of false and/or misleading statements in ballot arguments concerning each of the measures.

More specifically, the rebuttal to the argument in favor of Measure V claims FALSELY that Measure W is a “*renter’s initiative*” and a “*renters initiative*,” and the rebuttal to the argument against Measure W makes the same false and/or misleading claim and contains other statements that are false and/or misleading. The portions of the arguments to be amended are highlighted in EXHIBIT 1 (ballot materials for Measure V) and EXHIBIT 2 (ballot materials for Measure W).

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1 **GENERAL ALLEGATIONS**

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3 6. At a City Council meeting on August 9, 2016, the Mountain View City
4 Council voted to place on the city ballot November 8, 2016 a city charter
5 amendment proposed through the initiative process, and four councilmembers
6 (Patricia Showater, Chris Clark, Michael Kasperzak and John McAlister) also
7 voted to place on the same ballot an **ordinance** proposed by them
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9 7. The initiative charter amendment concerns rent control and “just cause” for
10 eviction. It has been designated Measure V. The City Council’s proposed
11 ordinance also concerns rents and evictions. It provides for binding arbitration of
12 some rent increases and has been designated Measure W.
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15 8. Before and at the August 9, 2016 City Council meeting referenced above,
16 Petitioner Gary Wesley questioned whether the City Council had the legal
17 authority to place the proposed ordinance on the ballot for adoption by voters..
18 No such authority had been cited in the staff report for the meeting, and no
19 authority was publicly cited at the meeting.
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22 9. On August 10, 2016, Petitioner submitted online to the City of Mountain
23 View a request for “*access to and a copy of one page which identifies the charter*
24 *and/or code section(s) that authorized the City Council to place on the November*
25 *2016 ballot the proposed binding arbitration ordinance.*”
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10. Later on August 10, 2016, Petitioner received an email response from the City of Mountain View that “(a)ttached are the statutes regarding the charter and/or code section(s) per your request.”

11. Still on August 12, 2016, Petitioner responded to the City with an email which reads: “*Thanks for the response but the section of the Mountain View City Charter provided only incorporate by reference the state Elections Code procedures for initiatives and referenda - not for elections more generally. Section 9222 of the state Elections Code is written for general law (non-charter) cities and does not apply to Mountain View. Does the City have any other authority to cite?*”

12. Later, on August 12, the City Attorney, Jannie Quinn, responded to the email as follows: “ *City Charter Sections 1302 and 1303 specifically state the California Elections Code applies to elections, initiatives and referendum in the City of Mountain View unless the Elections Code conflicts with the Charter. In adopting the Charter, the City of Mountain View did not include any provisions that conflict with the Elections Code or limit the City’s ability to place an ordinance on the ballot. There is no conflict. Therefore, Elections Code Section 9222 applies and authorizes the City Council to submit an ordinance to the voters.*”

1 13. Still on August 12, Petitioner responded: *"Thanks for citing another*
2 *section of the City Charter (1302) as authority for employing Section 9222 of the*
3 *state Elections Code otherwise applicably only to general law cities; however,*
4 *Section 1302 of the City Charter concerns the procedures for conducting elections*
5 *and not the authority of the City Council to defer to voters to enact an ordinance.*
6 *There still appears to be no such authority except as to an ordinance proposed by*
7 *initiative petition."*

10 14. The email from Petitioner continued: *"Allow me to raise another issue with*
11 *you. You had the City Council adopt different 10-day inspection periods for*
12 *different parts of the election materials concerning the two measures. Opening*
13 *ballot arguments for and against each measure are due next Monday, August 15.*
14 *Other materials are due by August 22. You had the Council action assert that the*
15 *inspection period begins right away for opening arguments even though materials*
16 *are not due until August 22. What authority is there for these different 10-day*
17 *inspection periods?"* No response to this final August 12 email was ever received.

21 15. Because the opening ballot argument (filed on August 15) against
22 Measure V is being challenged by this petition, the Court will need to determine
23 whether the City may establish and use two different 10-day inspection periods for
24 ballot materials. Petitioner contends that there can be only one 10-day period for
25 inspecting and suing over the election materials (starting when they are all
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1 made available for public inspection and the initiative of a lawsuit over any such
2 materials (under **Elections Code Section 9295** adopted by as an election
3 procedure by **Section 1302 of the Mountain View City Charter**).

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5 16. **California Elections Code Section 9295** allows a party-plaintiff to seek
6 either a “*peremptory writ of mandate or an injunction*.” While this is a petition
7 for the remedy of a writ of mandate, Petitioner seeks, in the alternative, an
8 injunction and, under this cause of action, a “*judgment*” against the City Clerk
9 under **Code of Civil Procedure Section 526a** “*restraining and preventing any*
10 *illegal expenditure of (or) waste of*” public funds in proceeding with an election
11 on Measure W.
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14 17. Attached as **EXHIBIT 1** is a copy of the ballot materials on Measure V
15 consisting of the “impartial analysis” followed by the 4 ballot arguments with
16 signature pages.
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18 18. Attached as **EXHIBIT 2** is a copy of the ballot materials on Measure W
19 consisting of the “impartial analysis” followed by the 4 ballot arguments with
20 signatures pages.
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22 19. The ballot argument against Measure W, submitted by Petitioner (part of
23 **EXHIBIT 2**) contends, among other things, that Measure W was placed on the
24 ballot in response to the initiative charter amendment (Measure V), by “*the*
25 *landlord-endorsed City Council majority*” and that “*(t)he effect of this additional*
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1 *measure could be to split the votes in support of holding down some residential*
2 *rents and cause the defeat of the initiative.” The ballot argument further avers that*
3 *“there is a legal issue about whether the City Council even had the authority to*
4 *place this proposed ordinance on the ballot. If not legally authorized, passage of*
5 *this measure would NOT result in its enactment into law.”*

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8 20. Petitioner’s own opening argument against Measure W is not challenged
9 by this petition. If Measure W is removed from the ballot, there will be no ballot
10 arguments on Measure W at all. The opening argument against Measure W is
11 presented partly to show the context in which three members of the City Council
12 presented a rebuttal which is challenged by this petition (in the second cause of
13 action).

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16 21. The opening argument against Measure W is also presented because it
17 correctly identifies what is at stake for voters on November 8 and why it is
18 contended that removal of Measure W from the ballot is justified pursuant to
19 California Supreme Court precedent (under the first cause of action).

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21 22. The opening argument against Measure W correctly states that every
22 member (of the 7-member) Mountain View City Council (except Lenny Siegel)
23 was endorsed as a candidate by a landlord-advocacy group (the Mountain View
24 “Housing Council” and/or the “Tri-County Apartment Association”)
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1 23. All 7 members of the Mountain View City Council live in their own
2 homes; none is a residential renter.

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4 24. Attached as **EXHIBIT 3** is the text of Measure W.

5 25. Also bearing on both causes of action is the first half of the rebuttal to the
6 argument against Measure W signed by Councilmembers Showalter, Kasperzak
7 and Clark, where they claim:
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9 *Measure W's lone opponent suggests there is 'a legal issue' about whether the*
10 *City Council can place an ordinance on the ballot. It is clearly legal for the*
11 *City Council to put Measure W on the ballot. The following official legal*
12 *guidance was provided to the City Council after a member of the public raised*
13 *a question:*

14 *Per the Mountain View City Charter, Mountain View follows the Elections*
15 *Code for the State of California. Elections Code Section 9200 authorizes any*
16 *incorporated city to enact an ordinance in accordance with the Elections Code*
17 *and Section 9222 of the Elections Code specifically authorizes the legislative*
18 *body of a city which is the Mountain View City Council-to submit the*
19 *enactment of an ordinance to the voters.*

20 26. Petitioner made an online request of the City of Mountain View for any
21 public record (other than the ballot argument itself) which contains any such
22 advice. No response to the request has been received.

23 FIRST CAUSE OF ACTION - AGAINST LORRIE BREWER, CITY CLERK -
24 TO REMOVE MEASURE W FROM THE NOVEMBER 8 BALLOT

25 27. The averments in paragraphs 1-26 are incorporated into this cause of action.

26 28. Petitioner notes that state Elections Code Section 9247 provides in part:
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1 *Article 1 (commencing with Section 9200) and this article do not apply to cities*
2 *having a charter adopted under Section 2 of Article XI of the California*
3 *Constitution , and having in their charters any provision for the direct*
4 *initiation of ordinances by voters...*

5 29. The City of Mountain View has had a city charter adopted under Section 2
6 of Article XI of the California Constitution for decades including the following
7 provision for the direct initiation of ordinances by voters in Section 1303 of the
8 City Charter titled "The Initiative and Referendum":

9 *Except as otherwise provided by ordinances hereinafter enacted, the provisions*
10 *of the Elections Code of the State of California, as the same now exists or may*
11 *hereafter be amended, governing the initiative and referendum shall apply to*
12 *the use thereof in the city insofar as the same are not in conflict with this*
13 *Charter.*

14 30. No ordinance enacted in Mountain View concerns the initiative or
15 referendum.

16 31. Petitioner contends: **Section 1303 of the Mountain View City Charter**
17 does provide for the direct initiation of ordinances by voters - but not the initiation
18 of ordinances by the City Council to be enacted by voters. **Section 1303** provides
19 for the initiative process by incorporating into the Charter that portion of the
20 state Elections Code that provides for **voter** initiatives. Section 9222 of the state
21 Elections Code does not provide for voter initiatives. Rather, it provides for
22 city councils in general law cities to propose ordinances to the adopted by voters,
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26 32. Petitioner further contends: The initiative process that must be and is
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1 recognized in Mountain View law is primarily contained in Article II, section 8 of
2 the California Constitution, which begins with a definition: “(a) *The initiative is*
3 *the power of the electors to propose statutes and amendments to the Constitution*
4 *and to adopt or reject them.*” Note too that Article XI, Section 3 of the California
5 Constitution does authorize a city council to place on the ballot proposed
6 amendments to a city charter - but not an ordinance.
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9 32. Petitioner further contends that **Section 516 of the Mountain View City**
10 **Charter** provides that “(n)o ordinance or resolution shall be passed or become
11 *effective without receiving the affirmative votes of at least four members of the*
12 *council*” and no ordinance may be enacted by voters themselves except through
13 the initiative process as defined in the California Constitution as including BOTH
14 the initiation of a proposed law by voter petition and then adoption by voters.
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17 33. The only portion of the Mountain View City Charter cited by the City
18 Attorney as somehow adopting section 9222 of the state Elections Code is
19 **Section 1302 of the Mountain View City Charter** which is entitled “***Procedure***
20 ***for holding elections***” and provides fully:
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23 *Except as hereinafter provided, all elections shall be held in accordance with*
24 *the provisions of the Elections Code of the State of California, as the same now*
25 *exist or may hereafter be amended, for the holding of elections in general law*
26 *cities, insofar as the same are not in conflict with this Charter. In all*
27 *municipal elections, the city council may appoint a canvassing board, which*
28 *shall meet on the morning of the first Tuesday following the election and*
canvass the returns and certify the results thereof to the city council.

1 34. Petitioner contends that nothing in Section 1302's adoption of state
2 procedures for holding elections authorizes the City Council to place its own
3 proposed an ordinance on the ballot for enactment by voters.
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5 35. Petitioner contends that leaving Measure W on the November ballot when
6 it could not lawfully be adopted by voters and become law would undermine the
7 election process to which the real voter initiative (Measure V) is entitled and
8 would defraud and confuse voters.
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10 SECOND CAUSE OF ACTION - AGAINST LORRIE BREWER, CITY CLERK
11 DELETION OR AMENDMENT OF FALSE AND/OR MISLEADING
12 STATEMENTS IN BALLOT ARGUMENTS ON MEASURES V AND W

13 36. The averments in paragraphs 1-35 are incorporated into this cause of action.

14 37. If Measure W is removed from the ballot, Petitioner contends that
15 references to Measure W should be removed from the ballot arguments on the real
16 initiative measure (V). This petition broadly seeks the deletion and/or amendment
17 of those portions of the rebuttals so that they are not false or misleading in view of
18 the removal of Measure W from the ballot.
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21 38. Measure W is referenced in 3 of the 4 arguments on Measure V. In
22 the event Measure W is ordered removed from the ballot, Petitioner proposes
23 that the Court order deletion of those portions of the argument unless a better
24 resolution is presented and agreed upon by the parties or ordered by the Court.
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27 39. The ARGUMENT AGAINST MEASURE V refers to Measure W in the
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1 last sentence in its first paragraph, the entire second paragraph, the last sentence in
2 the third paragraph, the second sentence in the fourth paragraph, the entire fifth
3 paragraph, the entire sixth paragraph and the entire seventh (last) paragraph.

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5 40. The REBUTTAL TO THE ARGUMENT IN FAVOR OF MEASURE V
6 refers to Measure W in the second, third and fourth sentences in the first
7 paragraph, in the fourth sentence in paragraph two, in the third and fourth
8 sentences in paragraph four, and in the entire fifth (last) paragraph.

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10 41. The REBUTTAL TO THE ARGUMENT AGAINST MEASURE V refers
11 to Measure W in the second sentence in the first paragraph, the second sentence in
12 the third paragraph, the second sentence in the fourth paragraph, the second
13 sentence in the fifth paragraph, the second sentence in the sixth paragraph, and the
14 second sentence in the seventh paragraph,
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17 42. If Measure W is not removed from the ballot, Petitioner seeks an
18 order deleting the following false and/or misleading statements in the REBUTTAL
19 TO THE ARGUMENT AGAINST MEASURE W: the first two paragraphs insofar
20 as it appears from the evidence that no such "legal guidance" was given, and the
21 portion of the second half of the argument darkened below:
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25 *Measure W's opponent also suggested it fails to protect tenants from being evicted*
26 *simply to raise rents. In fact, Measure W explicitly addresses this issue by*
27 *including Just-Cause-Eviction provisions based on and very similar to those in*
28 *Measure V. **Measure W prohibits evicting someone without good reason like***

1 *failure to pay rent or criminal behavior and contains anti-retaliation protection.*

2 *The City Council even went a step further than Measure V by adding a financial*
3 *disincentive for evicting someone for the sole purpose of raising the rent by*
4 *requiring the payment of significant relocation assistance.*

5 *Measure W is the smarter renters' initiative.*

6
7 *Vote for Measure W.*

8 43. As the "impartial analysis" on Measure W notes, "*if a landlord complies*
9 *with the City's Tenant Relocation Assistance Ordinance, just cause would not be*
10 *required for a landlord to terminate a tenancy*" (page 1, last sentence).

12 44. The "anti-retaliation protection" in Measure W (Section 43.30) only
13 applies to actions taken in retaliation for the actual exercise of tenants rights under
14 the ordinance which does not provide any right to NOT have a tenancy terminated
15 - whether by the expiration of a fixed term, the failure of the landlord to renew or
16 the issuance of a notice of termination. The provision does not outlaw
17 terminations designed to secure new tenants at market rates.

20 45. While it is true that Measure V does not provide for relocation assistance,
21 Petitioner contends that the claim in the ballot argument that the City Council
22 "*went a step further than Measure V by adding a financial disincentive for*
23 *evicting someone for the sole purpose of raising the rent by requiring the payment*
24 *of significant relocation assistance*" is grossly misleading because, in fact, the
25 of significant relocation assistance" is grossly misleading because, in fact, the
26 of significant relocation assistance" is grossly misleading because, in fact, the
27 of significant relocation assistance" is grossly misleading because, in fact, the
28 of significant relocation assistance" is grossly misleading because, in fact, the

1 provision for some possible relocation assistance in the proposed order would only
2 apply when a landlord seeks to end a tenancy without any “just cause.”

3 46. Finally, Petitioner contends that the claim in the REBUTTAL TO THE
4 ARGUMENT IN FAVOR OF MEASURE V (first paragraph, second sentence,
5 and last sentence) and in the REBUTTAL TO THE ARGUMENT AGAINST
6 MEASURE W (second to last paragraph) that Measure W is a “*renter(s)*
7 *initiative*” is false and/or misleading because Measure W is neither an initiative
8 nor was it placed on the ballot by any renter(s). The entire sentences involved
9 should be ordered deleted (unless some other resolution is agreed upon by the
10 parties and/or ordered by the Court).

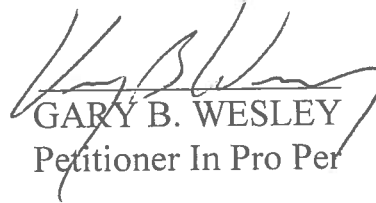
11 47. Petitioner alleges that there is sufficient time for the Court to order the
12 correction of the ballot arguments without interfering with the printing of the
13 ballot materials.

14 48. Petitioner further contends that this petition is brought to enforce an
15 important public right or rights, and notice is given that he may seek an award of
16 attorneys fees under **California Code of Civil Procedure Section 1021.5** in the
17 event he engages any other attorney(s) to represent him in this case.

18 WHEREFORE, Petitioner seeks (1) a peremptory writ of mandate directing the
19 elections official for the City of Mountain View to remove Measure W from the
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1 ballot and/or delete and/or amend ballot arguments as sought, and (2) such other
2 relief as the Court deems just.

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4 Date: August 29, 2016.
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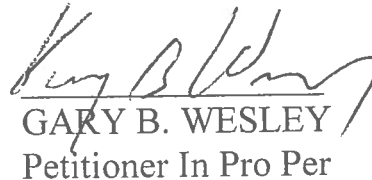

GARY B. WESLEY
Petitioner In Pro Per

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8 **VERIFICATION**

9 I have read the foregoing Petition and knows its factual averments to be true of
10 my own knowledge except insofar as any of them is stated on information and
11 belief and, as to each such statement, I believe it is true.

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13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on August 29, 2016 in Santa Clara County, California.
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18 GARY B. WESLEY
19 Petitioner In Pro Per
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